

who has been retained or employed by another party in anticipation of administrative adjudication or litigation or preparation therefore and who is not expected to be called as a witness, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(iii) Unless manifest injustice would result, (A) the administrative law judge shall require the party seeking discovery to pay the expert, or the Department if the expert is an employee of the United States, a reasonable fee for time spent in responding to paragraphs (g)(3)(i)(B) and (g)(3)(ii) of this section; and (B) with respect to discovery under paragraph (g)(3)(i)(B) of this section the administrative law judge may require and with respect to discovery under paragraph (g)(3)(ii) of this section the administrative law judge shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(4) Unless the notice of appeal is filed in accordance with paragraph (h) of this section, the administrative law judge's decision shall constitute the final administrative decision of the Secretary in the matter and shall become effective 30 calendar days from the date of the decision.

(h) *Appeal.* (1) Either the respondent or the Solicitor may seek an appeal from the decision of an administrative law judge as to the respondent's violation or penalty or both by the filing of a notice of appeal with the Director, Office of Hearings and Appeals, United States Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203, within 30 calendar days of the date of the administrative law judge's decision. Such notice shall be accompanied by proof of service on the administrative law judge and the opposing party.

(2) Upon receipt of such a request, the Director, Office of Hearings and Appeals, shall appoint an ad hoc appeals board to determine whether an appeal should be granted, and to hear and decide an appeal. To the extent

they are not inconsistent herewith, the provisions of 43 CFR part 4, subpart G shall apply to appeal proceedings under this paragraph. The determination of the board to grant or deny an appeal, as well as its decision on the merits of an appeal, shall be in writing and become effective as the final administrative determination of the Secretary in the matter on the date it is rendered, unless otherwise specified therein.

(i) *Amount of penalty.* The amount of any civil penalty assessed under this section shall not exceed \$10,000 for each violation. Each day of a continuing violation shall, however, constitute a separate offense. In determining the amount of such penalty, the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the respondent, his history of any prior offenses, his demonstrated good faith in attempting to achieve timely compliance after being cited for the violation, and such other matters as justice may require shall be considered.

(j) *Petition for remission.* The Solicitor may modify or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph unless the matter is pending in court for judicial review or for recovery of the civil penalty assessed. A petition for remission may be filed by the respondent with the Solicitor at any time from the date of the notice of violation referred to in paragraph (b) of this section until 90 days after the date of final administrative decision assessing a civil penalty. The petition must set forth in full the legal and other reasons for the relief requested. Any petition that is not timely filed will not receive consideration. The Solicitor's decision shall be the final administrative decision for the Secretary on the petition.

[48 FR 16858, Apr. 19, 1983, as amended at 67 FR 38208, June 3, 2002]

## Subpart F—Reporting and Data Management

### § 37.51 Operational reports.

(a) Each permittee shall submit reports every 2 weeks on the progress of exploratory activities in a manner and

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format approved or prescribed by the Regional Director. These shall include, but are not limited to, a daily log of operations, and a report on the discovery of any springs, hydrocarbon seeps, and other unusual phenomena.

(b) Each permittee shall submit to the Regional Director a semiannual report of exploratory activities conducted within the periods from December through May and June through November. These semiannual reports shall be submitted on August 1 and February 1 or, as otherwise specified by the Regional Director, and shall contain the following:

(1) A description of the work performed;

(2) Charts, maps, or plats depicting the areas in which any exploratory activities were conducted, specifically identifying the seismic lines and the locations where geological exploratory activities were conducted, and the locations of campsites, airstrips and other support facilities utilized;

(3) The dates on which exploration was actually performed.

(4) A narrative summary of any: (i) Surface occurrences of hydrocarbon or environmental hazards, and (ii) adverse effects of the exploratory activities on the refuge's wildlife, its habitat, the environment, cultural resources, or other uses of the area in which the activities were conducted; and

(5) Such other information as may be reasonably specified by the Regional Director.

(c) Each permittee shall also submit such other reports as are specified in this part.

## § 37.52 Records.

The permittee shall keep accurate and complete records relating to its exploratory activities and to all data and information, including, but not limited to, raw, processed, reprocessed, analyzed and interpreted data and information, obtained as a result thereof. Until September 2, 1989, the Secretary shall have access to and the right to examine and reproduce any records, papers, or other documents relating to such activities, data and information in order to ascertain the permittee's compliance with this part, ability to perform under any special use permit,

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and reliability and accuracy of all data, information and reports submitted to the Regional Director.

## § 37.53 Submission of data and information.

(a) The permittee shall submit to the Regional Director free of charge all data and information obtained as a result of carrying out exploratory activities. Such data and information include copies of all raw data and information and all processed, analyzed and interpreted data or information. The permittee shall, unless directed otherwise by the Regional Director, submit such data and information within 30 days after the end of the annual quarter during which they become available to it at every level of data gathering or utilization, i.e., acquisition, processing, reprocessing, analysis, and interpretation.

(b) Each submission of geophysical data or information shall contain, unless otherwise specified by the Regional Director, the following:

(1) An accurate and complete record of each geophysical survey conducted under the permittee's permit, including digital navigational data, if obtained, and final location maps of all survey stations; and,

(2) All seismic data developed under the permit, presented in a format prescribed or approved by the Regional Director and of a quality suitable for processing.

(c) Processed geophysical information shall be submitted with extraneous signals and interference removed as much as possible, and presented in a format and of a quality suitable for interpretive evaluation, reflecting state-of-the-art processing techniques.

(d) Processed, analyzed and interpreted data or information required to be submitted by the Act and this section shall include, but not be limited to, seismic record sections, and interpretations thereof; geologic maps, cross sections, and interpretations thereof; maps of gravitational and magnetic fields and interpretations thereof; and chemical or other analyses of rock samples collected on the refuge and interpretations thereof.